

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HOWLAND 3 INVESTMENTS, LLC,  
EASY STREET AUTO WASH, INC., and  
JEFF MCCARTY,

Plaintiffs,

v.

HERITAGE COAL COMPANY, LLC,  
PEABODY COAL COMPANY, LLC,  
PEABODY COAL COMPANY, a  
corporation, and PEABODY HOLDING  
COMPANY, INC.,

Defendants.

Case No. 09-cv-451-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiffs's Notice of Voluntary Dismissal (Doc. 12) of all claims against Defendant Peabody Holding Company, Inc. Rule 41(a)(1)(A)(i) allows dismissal of all claims against a defendant by a plaintiff without a court order at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. Defendant Peabody Holding Company, Inc. has not filed an answer or motion for summary judgment in this case. Because Plaintiffs have an absolute right to dismiss the claims against Defendant Peabody Holding Company, Inc. at the present time, the Court finds that Defendant Peabody Holding Company, Inc. is **DISMISSED** from this action **without prejudice** and **DIRECTS** the Clerk of Court to enter judgment accordingly.

**IT IS SO ORDERED.**

**DATED: July 16, 2009**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**